

STEPTOE & JOHNSON LLP

DOCKET FILE COPY ORIGINAL

1330 Connecticut Avenue, NW  
Washington, DC 20036-1795

Telephone 202.429.3000  
Facsimile 202.429.3902  
<http://www.steptoel.com>

Maury D. Shenk  
202.429.6487  
[mshenk@steptoel.com](mailto:mshenk@steptoel.com)

RECEIVED

JAN 29 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

January 29, 1999

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
The Portals  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: Direct Access to the INTELSAT System,  
IB Docket No. 98-192, File No. 60-SAT-ISP-97

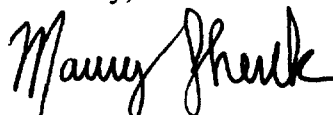
Dear Ms. Salas:

Enclosed for filing are an original and four copies of the Comments of MCI WorldCom, Inc. in the above-referenced matter. Please date stamp and return the additional enclosed copy of this submission.

In addition, a 3.5 inch diskette containing an electronic version of the submission is enclosed, and is also being provided to Kathleen Campbell of the International Bureau and to International Transcription Services.

Please contact me if you have any questions regarding this filing.

Sincerely,



Maury D. Shenk

Enclosures

No. of Copies rec'd 0+4  
List ABCDE

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

RECEIVED

JAN 29 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Direct Access to the INTELSAT System

IB Docket No. 98-192

File No. 60-SAT-ISP-97

To: The Commission

**REPLY COMMENTS OF MCI WORLDCOM, INC.**

Robert S. Koppel  
Jennifer A. Manner  
**MCI WorldCom, Inc.**  
1717 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

*Counsel*

Alfred M. Mamlet  
Maury D. Shenk  
**Steptoe & Johnson LLP**  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036

January 29, 1999

## SUMMARY

The initial round of comments support the position of MCI WorldCom, Inc. (“MCI WorldCom”) that the Commission should implement (1) Level 3 direct access to INTELSAT space segment, (2) a six-month “fresh look” period for long-term commitments to COMSAT, and (3) portability of INTELSAT space segment capacity. All commenters in this proceeding support direct access – with the exception of COMSAT, Lockheed Martin (the prospective parent of COMSAT) and Columbia Communications (a competitor of INTELSAT). All of COMSAT’s major customers (MCI WorldCom, AT&T, Sprint and the television networks) and several smaller customers (GlobeCast, ICG Satellite Services, IT&E Overseas and Three Angels Broadcasting Network), as well as the major U.S. satellite companies that compete with INTELSAT (PanAmSat, Loral and GE Americom), support direct access. In addition, several parties support (and no party opposes) “fresh look” and portability of INTELSAT capacity.

COMSAT’s extensive comments can be boiled down to two essential points – (1) that the Communications Satellite Act of 1962 (the “Satellite Act”) gives COMSAT a monopoly on INTELSAT services and (2) that COMSAT’s current de facto monopoly on U.S. access to INTELSAT allocates costs better than the market would. These points are contrary to the text of the Satellite Act, the facts in the record, and Commission policies promoting competition. Moreover, COMSAT makes fundamentally inconsistent arguments on the two points – simultaneously arguing that direct access would deprive COMSAT of a valuable property right and that direct access would produce no significant savings to consumers.

**Legal Authority.** COMSAT seeks to find a right of exclusivity in the Satellite Act that the text of the Act does not support, and that is directly contradicted by the requirement

of the Act that the Commission “insure that all present and future authorized carriers shall have nondiscriminatory use of, and equitable access to the communications satellite system.”<sup>1</sup> The Satellite Act is a flexible statute that permits the Commission to deal appropriately with developments in the satellite market. Nothing in the statutory language or legislative history cited by COMSAT indicates that the Commission lacks the authority to make appropriate changes in its regulation of INTELSAT services as market conditions change. Indeed, the Commission’s 1982 decision in Authorized User II to permit COMSAT to provide INTELSAT services directly to end-users illustrates the flexibility inherent in the Satellite Act, and completely undermines COMSAT’s fundamental contention that the Act prohibits COMSAT from serving end-users while prohibiting carriers from buying directly from INTELSAT.

Level 3 direct access also is not a taking of property under the Fifth Amendment of the Constitution, because there is no “regulatory contract” between the U.S. government and COMSAT, because direct access would not deny COMSAT “economically viable use” of its INTELSAT investment, and because there would be no “permanent physical occupation” of COMSAT property.

**Public Interest Analysis.** Numerous changes in the telecommunications market in the fifteen years since the 1984 Direct Access Order – in particular the development of fierce global competition for international telecommunications services and INTELSAT’s adoption of direct access procedures – show that direct access is now in the public interest. These developments, together with new evidence in record, indicate that the Commission should update

---

<sup>1</sup> 47 U.S.C. § 721(c)(2).

its 1984 analysis. Among other things, evidence in the Direct Access NPRM and elsewhere shows that COMSAT charges huge, monopoly mark-ups for INTELSAT services that are plainly not cost-justified and that significantly increase prices for INTELSAT end-users.

COMSAT's opposition to direct access on the ground that "facilities-based competition in the U.S. international marketplace has grown significantly in the absence of direct access"<sup>2</sup> is directly contrary to the policies of the Telecommunications Act of 1996 and the World Trade Organization Basic Telecommunications Agreement that all markets should be opened to competition. Consistent with these policies, the United States should join the 94 countries have already adopted Level 3 or Level 4 direct access. The fact many of these countries have less liberalized communications markets than the United States, as COMSAT argues, does not counsel against direct access, but in favor of it. As in other communications sectors, the U.S. should be a leader in liberalization.

**IUC Surcharge.** COMSAT has substantially failed to respond to the Commission's specific request for detailed information on its INTELSAT-related costs. The limited data that COMSAT supplies do not support a surcharge on the INTELSAT Utilization Charge ("IUC") in connection with direct access. **First**, other countries, including Chile, France, Germany, the Netherlands, and the UK, have implemented direct access without any surcharge at all. **Second**, COMSAT provides irrelevant information on INTELSAT's rate of return on assets, but fails to demonstrate that the 17-21 percent return on COMSAT's investment in INTELSAT is inadequate. Indeed, because of the attractiveness of this return, MCI WorldCom would be

---

<sup>2</sup> COMSAT Comments, at 50-51.

willing to purchase COMSAT's entire INTELSAT investment share. **Third**, the only expenses that might properly be included in an IUC surcharge are nominal expenses associated directly with COMSAT's statutorily-mandated duties as U.S. Signatory to INTELSAT. Even the unsupported data submitted by COMSAT indicate that such expenses justify a surcharge no higher than 1.94 percent.

## TABLE OF CONTENTS

|      |  |    |
|------|--|----|
| I.   | INTRODUCTION .....   | 1  |
| II.  | THE SATELLITE ACT AND THE CONSTITUTION PERMIT DIRECT<br>ACCESS (¶¶ 16-43).....   | 3  |
|      | A. The Satellite Act Plainly Gives the Commission Flexibility to Implement<br>Level 3 Direct Access (¶¶ 18-30).....  | 3  |
|      | B. Level 3 Direct Access Is Not a Taking (¶¶ 31-43).....   | 9  |
| III. | DIRECT ACCESS, WITH “FRESH LOOK” AND PORTABILITY OF<br>INTELSAT CAPACITY, IS IN THE PUBLIC INTEREST (¶¶ 44-55) .....   | 11 |
|      | A. The Commenters Support Direct Access, “Fresh Look,” and Portability of<br>INTELSAT Capacity .....   | 13 |
|      | B. The Commission Should Reconsider Its Public Interest Determination in the <u>1984<br/>Direct Access Order</u> Based on Changed Circumstances and New Information<br>(¶¶ 47, 49-51)..... | 15 |
|      | C. The United States Should Join the Numerous Countries That Have Adopted<br>Direct Access (¶ 44).....   | 20 |
| IV.  | COMSAT HAS NOT DEMONSTRATED THAT IT SHOULD RECEIVE<br>MORE THAN A NOMINAL SURCHARGE OVER THE IUC .....   | 21 |
| V.   | DIRECT ACCESS DOES NOT THREATEN TO PRODUCE COMPETITIVE<br>HARMS OR TO DELAY INTELSAT PRIVATIZATION (¶¶ 56-59) .....  | 25 |
| VI.  | CONCLUSION.....  | 27 |

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

**In the Matter of  
  
Direct Access to the INTELSAT System**

**IB Docket No. 98-192  
File No. 60-SAT-ISP-97**

**To: The Commission**

**REPLY COMMENTS OF MCI WORLDCOM, INC.**

MCI WorldCom, Inc. ("MCI WorldCom") hereby replies to the initial round of comments on the Commission's Notice of Proposed Rulemaking in the above-captioned matter (the "Direct Access NPRM").<sup>1</sup>

**I. INTRODUCTION**

The initial round of comments support the conclusion that direct access to the INTELSAT system is consistent with law and in the public interest. The telecommunications world is far different in 1999 than it was fifteen years ago when the Commission adopted the 1984 Direct Access Order.<sup>2</sup> The changes since then – in particular the development of fierce global competition for international telecommunications services and INTELSAT's adoption of

---

<sup>1</sup> As in the initial comments of MCI WorldCom, the headings and subheadings of these reply comments contain references (in parentheses) to the paragraphs of the Direct Access NPRM to which they relate.

<sup>2</sup> Regulatory Policies Concerning Direct Access to the INTELSAT Space Segment for U.S. International Service Carriers, 97 F.C.C.2d 296 (1984) ("1984 Direct Access Order"), aff'd, Western Union International v. FCC, 804 F.2d 1280 (D.C. Cir. 1986).



direct access procedures – justify a Commission conclusion that direct access is now in the public interest. For these reasons and others, all commenters in this proceeding except COMSAT, Lockheed Martin and Columbia Communications support direct access. In particular, all INTELSAT/COMSAT customers participating in the proceeding support direct access.

COMSAT's nearly 300 pages of comments and studies in this proceeding (and additional 100 pages resubmitted from previous proceedings) can be boiled down to two essential points. **First**, COMSAT argues that the Communications Satellite Act of 1962 (the "Satellite Act")<sup>3</sup> gives it a monopoly on INTELSAT services, notwithstanding that the flexible language of the Act provides no such monopoly. **Second**, COMSAT contends that its current de facto monopoly on U.S. access to INTELSAT allocates costs better than the market would. These points are contrary to the text of the Satellite Act, the facts in the record, and Commission policies promoting competition.

Furthermore, COMSAT's arguments supporting these two points are inconsistent. COMSAT argues that direct access would deprive COMSAT of a valuable property right (i.e., that COMSAT's de facto monopoly is valuable because it generates significant returns above cost), while at the same time arguing that direct access would produce no significant savings to consumers (i.e., that elimination of the monopoly would not result in significant cost savings). These points are inconsistent because they take opposite views of whether COMSAT's mark-ups on INTELSAT space segment are cost-based. In addition, COMSAT has substantially failed to

---

<sup>3</sup> Pub. L. No. 87-624, 76 Stat.419 (1962) (codified as amended at 47 U.S.C. §§ 701-744).

respond to the Commission's specific request for detailed information on its INTELSAT-related costs.

## **II. THE SATELLITE ACT AND THE CONSTITUTION PERMIT DIRECT ACCESS (§§ 16-43)**

### **A. The Satellite Act Plainly Gives the Commission Flexibility to Implement Level 3 Direct Access (§§ 18-30)**

MCI WorldCom and numerous other commenters have demonstrated that the Satellite Act plainly permits Level 3 direct access.<sup>4</sup> COMSAT, however, argues at length that the Satellite Act does not permit Level 3 direct access,<sup>5</sup> essentially seeking to find a right of exclusivity in the Satellite Act that the text of the Act does not support. Indeed, even Lockheed Martin, COMSAT's prospective future parent, does not argue that the Satellite Act prohibits direct access.<sup>6</sup>

---

<sup>4</sup> See Comments of MCI WorldCom, Inc., at 3-7 (Dec. 22, 1998) ("MCI WorldCom Comments"); Comments of ABC, Inc., CBS Corporation, National Broadcasting Company, Inc. and Turner Broadcasting System, Inc., at 14-18 (Dec. 22, 1998) ("Networks Comments"); Comments of AT&T Corp., at 2-5 (Dec. 22, 1998) ("AT&T Comments"); Comments of BT North America, Inc., at 8-16 (Dec. 22, 1998) ("BT Comments"); Comments of Cable & Wireless, at 6-10 (Dec. 22, 1998) ("C&W Comments"); Comments of Ellipso, Inc., at 5-6 (Dec. 22, 1998) ("Ellipso Comments"); Comments of GE American Communications, Inc., at 3-7 (Dec. 22, 1998) ("GE Americom Comments"); Comments of GlobeCast North America Incorporated, at 2 (Dec. 22, 1998); Comments of IT&E Overseas, Inc., at 3-4 (Dec. 22, 1998); Comments of Loral Space & Communications Ltd., at 1-2 (Dec. 22, 1998) ("Loral Comments"); Comments of PanAmSat Corporation, at 3-4 (Dec. 22, 1998) ("PanAmSat Comments"); Comments of Sprint Communications Company, L.P., at 3-5 (Dec. 22, 1998) ("Sprint Comments").

<sup>5</sup> See Comments of COMSAT Corporation, at 4-34 & App. 1 (Dec. 22, 1998) ("COMSAT Comments").

<sup>6</sup> See Comments of Lockheed Martin Corporation, at 14 (Dec. 22, 1998) ("Lockheed Martin Comments") (assuming "for the sake of discussion that the Commission possesses the  
(Continued ...)

COMSAT attempts to read exclusivity into Section 735(a) of the Satellite Act – the provision setting out COMSAT’s basic powers – where none exists. COMSAT claims that “COMSAT alone” has power to provide INTELSAT space segment to U.S. common carriers and “only COMSAT” has the power to enter into contracts with U.S. users for INTELSAT services.<sup>7</sup> However, the Satellite Act simply does not say “COMSAT alone” in Section 735(a)(2) (which relates to provision of space segment) or “only COMSAT” in Section 735(b)(4) (which relates to contracts for INTELSAT services).

Although the Commission tentatively concluded that the Satellite Act does not permit Level 4 direct access,<sup>8</sup> two commenters have argued that Section 735(a)(1) of the Satellite Act is not exclusive and is consistent with Level 4 direct access.<sup>9</sup> Regardless of the effect of Section 735(a)(1), however, it is entirely clear that Section 735(a)(2) – the provision relevant to Level 3 direct access – does not establish any exclusivity regarding the authority to “furnish, for hire, channels of communication to United States communications common carriers and to other authorized entities ...”<sup>10</sup> In the absence of a Congressional statutory directive mandating a

---

statutory authority to permit INTELSAT to have direct access to the U.S. market (and Lockheed Martin does not address this point”).

<sup>7</sup> COMSAT Comments, at 10.

<sup>8</sup> See Direct Access NPRM, ¶ 19.

<sup>9</sup> See BT Comments, at 8-16; C&W Comments, at 10-11.

<sup>10</sup> 47 U.S.C. § 735(a)(2).

COMSAT monopoly, the Commission should refrain from reading a monopoly into the Satellite Act.<sup>11</sup>

COMSAT implicitly recognizes the absence of any textual basis for exclusivity in Section 735(a)(2) when it argues that exclusivity arises not from the text of the provision, but from “the context of a statute constructed around the concept of U.S. participation in the satellite system through a single corporation.”<sup>12</sup> COMSAT’s arguments prove too much. MCI WorldCom and other COMSAT carrier customers, under Commission authorization, routinely “furnish, for hire, [INTELSAT] channels of communication to United States communications common carriers” by resale of COMSAT’s services. This would be illegal “participation” under COMSAT’s reading of Section 735(a)(2).

COMSAT argues that the only non-exclusive provision of Section 735(a) is Section 735(a)(3) (which relates to earth stations), on the basis that Section 721(c)(7) of the Satellite Act explicitly permits the Commission to authorize entities other than COMSAT to build and operate earth stations.<sup>13</sup> COMSAT fails to note, however, that another provision of the Act similarly demonstrates that Section 735(a)(2) is also not exclusive. Specifically, Section 721(c)(2) requires the Commission to “insure that all present and future authorized carriers shall have nondiscriminatory use of, and equitable access to the communications satellite

---

<sup>11</sup> See City of Joplin v. Southwest Missouri Light Co., 191 U.S. 150, 157 (1903) (“There are presumptions ... against the granting of exclusive rights and against limitations upon the powers of government.”); Charles River Bridge v. Warren Bridge, 36 U.S. (11 Pet.) 420, 546-553 (1837) (discussing presumption against implication of exclusive rights from a legislative grant).

<sup>12</sup> COMSAT Comments, at 18 (emphasis added).

<sup>13</sup> See COMSAT Comments, at 20; 47 U.S.C. § 721(c)(7).

system.”<sup>14</sup> The “communications satellite system” is INTELSAT, not COMSAT. As a common carrier, COMSAT is by definition one of many “authorized carriers” entitled to non-discriminatory and equitable – not exclusive – access to INTELSAT.<sup>15</sup> Moreover, “[i]t is the intent of Congress that all authorized users have nondiscriminatory access to the system,”<sup>16</sup> not merely to COMSAT.

COMSAT also argues that the legislative history of the Satellite Act demonstrates that “all participants in the deliberations over the Satellite Act recognized that Congress was granting COMSAT an exclusive franchise over access to the new satellite system.”<sup>17</sup> To the contrary, while COMSAT may be correct that some or many members of Congress initially assumed that COMSAT would have an exclusive INTELSAT franchise,<sup>18</sup> Congress was careful not to incorporate this assumption into the Satellite Act by mandating such exclusivity in the statute. What Congress did was enact a flexible statute that permits the Commission to deal appropriately with developments in the satellite market. Nothing in the extensive legislative history cited by COMSAT indicates that the Commission lacks the authority to make appropriate changes in its regulation of INTELSAT services as market conditions change.

---

<sup>14</sup> 47 U.S.C. § 721(c)(2).

<sup>15</sup> See 47 U.S.C. § 702(7) (the term “authorized carrier” ... means a communications common carrier which has been authorized by the Federal Communications Commission ... to provide services by means of communications satellites”).

<sup>16</sup> 47 U.S.C. § 701(c).

<sup>17</sup> COMSAT Comments, at 23.

<sup>18</sup> See generally COMSAT Comments, at 4-10, 23-28.

Furthermore, none of the Commission or judicial precedent on which COMSAT relies directly addresses the legal authority for direct access under the Satellite Act, as the Commission has noted.<sup>19</sup> In fact, the Commission's 1982 decision in Authorized User II<sup>20</sup> to permit COMSAT to provide INTELSAT services directly to end-users provides an excellent illustration of the flexibility inherent in the Satellite Act.<sup>21</sup> While some members of Congress and FCC Chairman Minow may have assumed that COMSAT would be a carriers' carrier,<sup>22</sup> this assumption was not cemented into the statute. Twenty years after passage of the Satellite Act, in Authorized User II, the Commission decided to increase competition by permitting COMSAT to break this mold and to serve end-users, despite Chairman Minow's prediction that "[u]nlike those carriers, [COMSAT] will not furnish service to the general public."<sup>23</sup> This decision directly contradicts COMSAT's claim that the Satellite Act made it solely a carrier's carrier, and

---

<sup>19</sup> See Direct Access NPRM, ¶ 27-28; COMSAT Comments, at 28-30; see also MCI WorldCom Comments, at 7.

<sup>20</sup> Proposed Modifications of the Commission's Authorized User Policy Concerning Access to the International Satellite Services of the Communications Satellite Corporation, 90 F.C.C.2d 1394 (1982) ("Authorized User II").

<sup>21</sup> See id. at 1397 ("we have determined, as a matter of policy, to permit Comsat to enter the end-to-end service market through a corporate affiliate separate from its INTELSAT/INMARSAT functions"). In 1983, the Commission clarified that the requirement of structural separation for COMSAT's end-to-end services does not apply to the provision of INTELSAT space segment (without associated termination services) to non-carrier users. See Changes in the Corporate Structure and Operations of the Communications Satellite System, 93 F.C.C.2d 701, 709-13 (1983).

<sup>22</sup> See COMSAT Comments, at 26-27.

<sup>23</sup> Communications Satellite – Part 2: Hearings on H.R. 10115 and H.R. 10138 Before the House Comm. on Interstate and Foreign Commerce, 87th Cong., 2d Sess. 407 (1962) (testimony of FCC Chairman Newton Minow) ("[COMSAT's] undertaking ... will be to furnish channels of communication to relatively few users; namely common carriers and their foreign counterparts").

completely undermines COMSAT's fundamental contention that the Act prohibited COMSAT from serving end-users while prohibiting carriers from buying directly from INTELSAT.<sup>24</sup> Just as the Act gave the Commission sufficient flexibility to permit COMSAT to serve end-users seventeen years ago, due to changing market conditions, it permits the Commission to respond to today's market conditions by authorizing direct access.

COMSAT is also incorrect that the availability of Level 3 direct access would be inconsistent with certain general provisions of the Satellite Act. **First**, the discretion of the Commission to authorize direct access when conditions are appropriate (as they are now) would not render meaningless the safeguards on ownership of COMSAT.<sup>25</sup> These safeguards have served an important purpose for many years under COMSAT's de facto monopoly on INTELSAT access, and will continue to be important under Level 3 direct access because of COMSAT's continuing exclusive role as U.S. Signatory to INTELSAT. **Second**, direct access would not frustrate the goal of building the INTELSAT system – which has, obviously, been fulfilled.<sup>26</sup> **Third**, “the very real possibility ... that COMSAT would have had to construct and own the new global satellite system by itself”<sup>27</sup> illustrates the flexibility inherent in the Act – the same flexibility that gives the Commission authority to implement Level 3 direct access.<sup>28</sup>

---

<sup>24</sup> Compare COMSAT Comments, at 23-26, with id. at 26-27.

<sup>25</sup> See id. at 21-22.

<sup>26</sup> See id. at 22.

<sup>27</sup> Id. at 23.

<sup>28</sup> Similarly, the concerns raised by carriers in connection with the passage of the International Maritime Satellite Telecommunications Act, see COMSAT Comments, at 30-31, are not inconsistent with availability of direct access, because such concerns were justified by

(Continued ...)

**B. Level 3 Direct Access Is Not a Taking (¶¶ 31-43)**

The commenters in this proceeding also agree that implementation of direct access would not constitute a taking requiring just compensation under the Fifth Amendment of the Constitution.<sup>29</sup> As a general matter, COMSAT's taking arguments (which presume that COMSAT's de facto monopoly on access to INTELSAT is valuable) are inconsistent with its claims that there would be no significant cost savings from direct access.<sup>30</sup> Moreover, each of COMSAT's specific taking arguments fail as a matter of law.

COMSAT's primary taking argument is that direct access would breach a "regulatory contract" between the U.S. government and COMSAT.<sup>31</sup> However, all of the cases on which COMSAT relies involved an explicit contractual undertaking by the government.<sup>32</sup> In several other decisions, the Supreme Court has made clear that there can be no constitutional violation of contractual rights claimed to be granted by statute where those rights are not

---

COMSAT's exclusive ownership rights in INTELSAT and de facto monopoly on access to INTELSAT.

<sup>29</sup> See MCI WorldCom Comments, at 7-9; AT&T Comments, at 5-11; C&W Comments, at 9-10; Ellipso Comments, at 6; GE Americom Comments, at 7; Loral Comments, at 2; Networks Comments, at 17-18; PanAmSat Comments, at 4-5; Sprint Comments, at 6.

<sup>30</sup> Compare COMSAT Comments, at 34-42, with id. at 73-75.

<sup>31</sup> See id. at 35-39 & App. 2.

<sup>32</sup> See United States v. Winstar Corp., 518 U.S. 839, 864 ("[w]e ... have no reason to question the Court of Appeals's conclusion that 'the government had an express contractual obligation'"); New Orleans Water Works v. Rivers, 115 U.S. 674, 677 (1885) (explicitly granting "exclusive privilege" to plaintiff); The Binghamton Bridge, 70 U.S. (3 Wall.) 51, 74 (1865) ("a contract made by a State with individuals is equally protected from invasion as a contract made between natural persons").



explicit.<sup>33</sup> Similarly, the Commission in its Interconnection Order<sup>34</sup> considered and rejected claims that making former monopoly facilities (i.e., the local loop and other elements of the local network) available at cost-based rates constituted a taking.<sup>35</sup> Implementation of direct access would likewise involve exercise of existing statutory authority to introduce competition in access to INTELSAT facilities, and would not breach any explicit undertaking by the U.S. government.

Direct access also would not deny COMSAT “economically viable use” of its INTELSAT investment.<sup>36</sup> It is undisputed that COMSAT would continue to earn a significant return on that investment from INTELSAT.<sup>37</sup> Indeed, Lockheed Martin, which has just recently agreed to purchase COMSAT, does not address or support COMSAT’s taking claims.<sup>38</sup> This

---

<sup>33</sup> See, e.g., City of Joplin v. Southwest Missouri Light Co., 191 U.S. at 155-58; Skaneateles Water Works Co. v. Skaneateles, 184 U.S. 354, 368 (1902) (“there was no such contract as claimed by the plaintiff, and consequently no impairment of the obligations of any contract, and there has been no taking of plaintiff’s property”); Charles River Bridge v. Warren Bridge, 36 U.S. (11 Pet.) at 546-553; see also 58 Corpus Juris Secundum Monopolies § 16 (1998) (“there is no implied contract in an ordinary grant of a franchise that the grantor will never do any act by which the value of the franchise granted may in the future be reduced, for it can never be presumed that the government intended to diminish or surrender its power of accomplishing the end for which it was created”).

<sup>34</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499 (1996).

<sup>35</sup> Id. at 15869-72.

<sup>36</sup> See COMSAT Comments, at 39-40.

<sup>37</sup> See Direct Access NPRM, ¶ 43; COMSAT Comments, at 83-84 & App. 3 at 22-33 (recognizing return from INTELSAT but arguing that it is inadequate).

<sup>38</sup> See Lockheed Martin Comments.

fact alone should conclusively refute COMSAT's claim that direct access interferes with "investment-backed expectations."<sup>39</sup>

Furthermore, COMSAT's "permanent physical occupation" argument is without basis.<sup>40</sup> Direct access would involve only facilities owned by INTELSAT (not COMSAT).<sup>41</sup> In any event, there would be no "occupation" of these facilities, which would carry the same communications traffic under direct access that they do now.

### **III. DIRECT ACCESS, WITH "FRESH LOOK" AND PORTABILITY OF INTELSAT CAPACITY, IS IN THE PUBLIC INTEREST (¶¶ 44-55)**

The numerous changes in the telecommunications market since the Commission last considered direct access in the 1984 Direct Access Order clearly indicate that direct access (accompanied by "fresh look" and portability of INTELSAT capacity) is now in the public interest.

Most of COMSAT's economic and policy arguments assume that the market would not determine pricing of INTELSAT services as well as COMSAT can as a monopolist. For example, COMSAT states:

The desire for direct access is predicated on the notion that it might somehow lead to appreciably lower prices and/or greater facilities-based competition. But the [Direct Access NPRM] identifies no relevant facts to support a reasoned justification that Level 3-type

---

<sup>39</sup> COMSAT Comments, at 39 (citing Kaiser Aetna v. United States, 444 U.S. 164, 175 (1979)).

<sup>40</sup> See id. at 40-42.

<sup>41</sup> COMSAT does not cite any authority for the claim that its investment interest in INTELSAT makes it a "co-owner" of the INTELSAT satellites. See id. at 40.

direct access is required to accomplish these objectives. Rather, the only facts before the agency today demonstrate ... that *facilities-based competition* in the U.S. international marketplace *has grown significantly in the absence of direct access* ... .<sup>42</sup>

This line of argument – i.e., that there is enough competition already so there is no need for any more – stands on its head the procompetitive trend exemplified by the Telecommunications Act of 1996 and the World Trade Organization Basic Telecommunications Agreement.<sup>43</sup> Indeed, the numerous competitive developments in the satellite and international services markets, on which COMSAT relies to support its “some competition is enough” argument,<sup>44</sup> strongly support the conclusion that the market for INTELSAT capacity should likewise be opened to competition.

Contrary to the arguments of COMSAT and Lockheed Martin,<sup>45</sup> the record is replete with evidence that direct access is in the public interest. Among other things, the comments in this proceeding demonstrate that direct access would provide cost savings and increased service flexibility. Furthermore, INTELSAT has introduced direct access procedures, which have been applied in at least 94 countries. Consistent with its Satellite Act obligation to “insure ... nondiscriminatory use of, and equitable access to [INTELSAT],”<sup>46</sup> the Commission should permit all U.S. customers to participate in the open market for INTELSAT capacity that the direct access procedures create.

---

<sup>42</sup> Id. at 50-51 (original emphasis; citations omitted).

<sup>43</sup> See MCI WorldCom Comments, at 11-12.

<sup>44</sup> See COMSAT Comments, at 51-53.

<sup>45</sup> See Lockheed Martin Comments, at 10 (“Lockheed Martin is compelled to observe that there appears to be nothing that is sufficiently tangible – either on its own or in combination with other postulated benefits – to warrant the required investment of Commission resources to implement direct access”).

<sup>46</sup> 47 U.S.C. § 721(c)(2).

**A. The Commenters Support Direct Access, “Fresh Look,” and Portability of INTELSAT Capacity**

The comments in this proceeding indicate that direct access, as well as “fresh look” and portability of INTELSAT capacity, are in the public interest. All commenters in this proceeding support direct access – with the exception of COMSAT, Lockheed Martin and Columbia Communications. Plainly, COMSAT and Lockheed Martin, the future parent of COMSAT, oppose direct access because they do not want to lose the monopoly rents that COMSAT earns from its de facto monopoly on U.S. access to INTELSAT. Columbia apparently opposes direct access because, as a competitor of INTELSAT/COMSAT, it would face increased competition under direct access.<sup>47</sup> Significantly, however, the three larger U.S. providers of fixed satellite service and competitors of INTELSAT (PanAmSat, Loral and GE Americom) support direct access.

Even more important, all of COMSAT’s largest customers (MCI WorldCom, AT&T, Sprint, and the television networks) and all smaller customers participating in the proceeding (GlobeCast North America, ICG Satellite Services, IT&E Overseas, and Three Angels Broadcasting Network) support direct access. The Commission should accord the views of these customers substantial weight in considering whether direct access would produce cost savings and serve the public interest.

---

<sup>47</sup> See Columbia Comments, at 1-2.

Furthermore, various parties support “fresh look” and portability of INTELSAT capacity, and no party opposes these additional measures that are critical to implementation of direct access.<sup>48</sup> For example, AT&T states with respect to “fresh look”:

[C]arriers will not achieve the benefits of direct access if they remain bound by contractual obligations secured by Comsat when it was the only provider. Indeed, direct access without permitting other carriers the ability to select other options would diminish the benefits to be gained by such Commission action. Therefore, once direct access is implemented, the Commission should offer Comsat’s customers a “fresh look” to choose another provider, renegotiate contract terms, or maintain their existing contracts with Comsat, without the threat of penalty.<sup>49</sup>

With respect to portability, Sprint states:

[T]he Commission should ensure portability of INTELSAT space segment capacity controlled by COMSAT. The competitive benefits of direct access can be realized only if COMSAT is required to make INTELSAT capacity available when a COMSAT customer takes advantage of “fresh look” to move to another carrier. Otherwise, COMSAT will be able to thwart customer defections to INTELSAT and thereby once again render direct access meaningless.<sup>50</sup>

---

<sup>48</sup> See MCI WorldCom Comments, at 24-30 (supporting “fresh look” and portability of INTELSAT capacity); Sprint Comments, at 10-14 (same); AT&T Comments, at 13-15 (supporting “fresh look”); ICG Comments, at 5-6 (same); Loral Comments, at 8-9 (same); PanAmSat Comments, at 9-10 (same).

<sup>49</sup> AT&T Comments, at 13-14.

<sup>50</sup> Sprint Comments, at 13.

**B. The Commission Should Reconsider Its Public Interest Determination in the 1984 Direct Access Order Based on Changed Circumstances and New Information (¶¶ 47, 49-51)**

The Commission's decision in the 1984 Direct Access Order to reject direct access on public interest grounds is no longer valid. The implementation of INTELSAT direct access and changes in the telecommunications market provide sufficient reasons for the Commission to revisit the 1984 decision. In addition, the Commission should reconsider the specific factual analysis in the 1984 Direct Access Order on which COMSAT relies,<sup>51</sup> based on significantly changed market circumstances and new information that is available in this proceeding.

First, the mark-ups listed in the Direct Access NPRM (which are as high as 270 percent) and analysis by the Satellite Users Coalition demonstrate the large cost savings that direct access would provide.<sup>52</sup> Such detailed evidence was absent in the 1984 Direct Access Order. Furthermore, COMSAT's average mark-ups are by far the highest for voice services (135 percent), where there is no effective satellite competition, and much lower for data services (55 percent) and video services (27 percent), for which COMSAT faces more competition from other satellite service providers (such as PanAmSat).<sup>53</sup> These vastly different mark-ups (which are not

---

<sup>51</sup> See COMSAT Comments, at 45-48 ("the very factors relied upon by the FCC in its 1984 decision are more valid today, and the current market facts further strengthen the 1984 conclusions").

<sup>52</sup> See Direct Access NPRM, App. B; Satellite Users' Coalition, Analysis of the Privatization of the Intergovernmental Satellite Organizations Proposed in H.R. 1872, at 23-25 & Table A6, File No. 60-SAT-ISP-97 (filed Mar. 16, 1998) (estimating that total consumer benefits from direct access would be more than \$1 billion over a 10 year period).

<sup>53</sup> See Direct Access NPRM, App. B (simple average mark-ups are 135% for voice services, 55% for data services, and 27% for video services (including INTELSAT K)).

justified by the differences between the underlying services) demonstrate that COMSAT extracts monopoly profits where it is able to do so, and that direct access is likely to produce significant cost savings, particularly for those services with the highest mark-ups (i.e., voice services).

**Second**, the market will provide the benefits of cost reductions to consumers. At the time of the 1984 Direct Access Order, the Commission still relied heavily on regulation (including rate-of-return regulation) to allocate cost savings; but the Commission now has well-established policies of letting competition play this role. For example, in International Settlement Rates, the Commission stated:

We believe that we should, to the extent possible, preserve the ability of U.S. carriers to make pricing decisions in response to ... competitive market forces. We thus find that it is not in the public interest at this time to mandate a particular approach U.S. carriers should take to pass through to consumers reductions in net settlements that occur as a result of the settlement rate benchmarks we adopt ... .<sup>54</sup>

COMSAT claims that such savings may not accrue to consumers because “while [COMSAT] rates to AT&T, MCI and Sprint have declined since 1992, the basic rates that those carriers charge for international calls have risen in the same period.”<sup>55</sup> This purported evidence is incorrect or misleading. Public filings at the FCC demonstrate that the average MCI collection rate for international calls fell from \$1.00/minute in 1992 to \$0.72/minute in 1997 (a drop of 28 percent).<sup>56</sup> Furthermore, a recent study by the Commission demonstrates that decreases in settlement rates have led to significant declines in prices on international calls from 1997 to

---

<sup>54</sup> International Settlement Rates, 12 FCC Rcd at 19930.

<sup>55</sup> COMSAT Comments, at 75.

<sup>56</sup> See FCC Section 43.61 International Telecommunications Data.

1998.<sup>57</sup> As for COMSAT's rates, the last change to the COMSAT International Digital Route ("IDR") tariff occurred on January 1, 1992.<sup>58</sup> For International Business Service ("IBS"), COMSAT has in fact raised tariffs for the services that MCI WorldCom primarily purchases. In 1995, COMSAT filed an IBS tariff which raised monthly rates and introduced annual rates. For a company willing to commit to annual rates, the new schedule reduced some C-band rates for sub-T-1 bandwidths. However, it significantly increased rates for the T-1 and E-1 services that MCI WorldCom uses heavily. Among other things, COMSAT's monthly rate of \$9,620 for a 1.544 Mbps IBS duplex half-circuit (at forward error correction rate 1/2) increased to \$59,245 (an increase of over 500 percent).<sup>59</sup>

As COMSAT points out, U.S. carriers are losing customers, such as the White House Press Pool, to foreign carriers that can purchase space segment at the IUC.<sup>60</sup> U.S. users and carriers should not have to use foreign carriers and foreign earth stations – and to move traffic away from U.S. earth stations in which carriers have made substantial investments – in order to obtain INTELSAT services at competitive prices.

**Third**, the INTELSAT Utilization Charge ("IUC") does measure the cost of INTELSAT space segment, and the existence of INTELSAT direct access policies now provides

---

<sup>57</sup> See FCC International Bureau, Report on International Telecommunications Markets 1997-1998 (Prepared for Senator Ernest F. Hollings) (Dec. 7, 1998).

<sup>58</sup> This revision introduced a regional tiered pricing mechanism that provides lower rates as circuit volume increases in a given region. Similarly, for IDR circuits that are priced based on contracts with COMSAT (rather than tariffs), MCI WorldCom has been able to obtain price relief only by increasing circuit commitments.

<sup>59</sup> See COMSAT Tariffs FCC Nos. 1 and 3.

<sup>60</sup> COMSAT Comments, at 59-60.



substantial evidence of this fact. The implementation of direct access in numerous countries results in many arm's-length transactions at the IUC between INTELSAT and non-Signatories. There would be no economic reason for INTELSAT to enter into these transactions if the IUC did not permit recovery of costs and a return to Signatories.

The IUC includes all of INTELSAT's costs of providing service and compensation to Signatories for use of capital.<sup>61</sup> The only costs that COMSAT claims are excluded from the IUC are certain expenses of COMSAT (not INTELSAT),<sup>62</sup> and as discussed in section V below, COMSAT has not demonstrated that such costs justify more than a nominal surcharge on the IUC to direct access customers. Significantly, there is no mark-up to the IUC in countries such as Chile, France, Germany, the Netherlands, and the UK; and British Telecom (the UK Signatory) has stated in this proceeding that it is satisfied with the absence of a mark-up.<sup>63</sup> In addition, while COMSAT is correct that the level of the IUC is economically irrelevant to an INTELSAT Signatory whose usage and ownership are in perfect balance,<sup>64</sup> this does not mean that the IUC is below cost. Indeed, the same effect is true with respect to international

---

<sup>61</sup> See Operating Agreement Relating to the International Telecommunications Satellite Organization (INTELSAT), Aug. 20, 1971, Art. 8(a), T.I.A.S. 7532 ("INTELSAT Operating Agreement"); see also COMSAT Comments, App. 3 at 23..

<sup>62</sup> See COMSAT Comments, App. 3 at 23-24 ("not included in IUC determinations are: (1) Signatories' corporate tax liabilities; (2) any direct costs that Signatories incur in performing their INTELSAT Signatory and customer service functions; and (3) indirect costs' associated with Signatories' investment and operating liabilities.").

<sup>63</sup> See BT Comments, at 5-6.

<sup>64</sup> See COMSAT Comments, App. 3 at 24.

settlement rates (because no settlement payments are due where traffic is balanced), but settlement rates are generally significantly above cost.<sup>65</sup>

**Fourth**, COMSAT receives a substantial, low-risk return on its investment in INTELSAT. In 1997, INTELSAT's targeted return on investment was 17-21 percent and its actual return was 18 percent.<sup>66</sup> This return (although pre-tax) is substantial, and is significantly higher than the 14 percent INTELSAT return at the time of the 1984 Direct Access Order.<sup>67</sup> Furthermore, the fact that COMSAT has elected to have excess investment in INTELSAT, a factor not considered in the 1984 Direct Access Order,<sup>68</sup> demonstrates the attractiveness of this return. Although COMSAT's claims that it "holds these additional shares not to maximize its investment return, but to enhance its voting power (and the influence of the United States) within INTELSAT,"<sup>69</sup> there is no reason to suppose that COMSAT would engage in economically irrational behavior. Furthermore, Lockheed Martin recently offered to pay a premium over market value for COMSAT (including its excess investment in INTELSAT),<sup>70</sup> and numerous entities that are Level 4 direct investors in INTELSAT (including Comsat General (UK)) have recognized the value of an investment in INTELSAT.<sup>71</sup> Similarly, MCI WorldCom would be

---

<sup>65</sup> See generally International Settlement Rates, 12 FCC Rcd 19806 (1997), aff'd, Cable & Wireless P.L.C. v. FCC, \_\_\_ F.3d \_\_\_, 1999 U.S. App. LEXIS 271 (D.C. Cir. 1999).

<sup>66</sup> See Direct Access NPRM, ¶ 9 & n.23.

<sup>67</sup> See 1984 Direct Access Order, 97 F.C.C.2d at 305.

<sup>68</sup> See id. at 312.

<sup>69</sup> COMSAT Comments, at 69.

<sup>70</sup> See Lockheed Martin SEC Form 14D-1 (Sept. 25, 1999) (describing tender offer for COMSAT stock and plan of merger).

willing to purchase COMSAT's entire investment share in INTELSAT (at the same price which COMSAT incurs for inter-Signatory transfers of INTELSAT ownership interests), in order to earn the same returns that COMSAT now earns.

**Fifth**, under Level 3 direct access, COMSAT would continue to be a single voice for the United States at INTELSAT, because Level 3 direct access would not reduce COMSAT's investment or voting share in INTELSAT. In fact, COMSAT's investment share would likely increase because of the increased traffic (due to reduced prices) that direct access would generate. Thus, it is very misleading for COMSAT to assert that direct access by "major U.S. carriers ... [would] balkanize the U.S. voice within INTELSAT ... ." <sup>72</sup>

**C. The United States Should Join the Numerous Countries That Have Adopted Direct Access (§ 44)**

At least 94 countries have adopted Level 3 or Level 4 direct access. <sup>73</sup> This fact alone weighs heavily in support of implementation of direct access in the United States, which has been a leader in most areas of telecommunications liberalization.

The fact that many of the countries that have adopted direct access have less liberalized communications markets than the United States <sup>74</sup> does not counsel against direct access, but in favor of it. As in other communications sectors, the U.S. should be a leader in liberalization. In many of the major, liberalized markets – e.g., Australia, Canada, Chile, France,

---

<sup>71</sup> See, e.g., BT Comments, at 7 (listing 20 Level 4 investors in INTELSAT).

<sup>72</sup> COMSAT Comments, at 48.

<sup>73</sup> See MCI WorldCom Comments, at 10-11 & nn.36-37.

<sup>74</sup> See COMSAT Comments, at 79-81.

Germany, Norway, Sweden, Switzerland, and the UK – direct access has been implemented in a manner that provides INTELSAT access to essentially any service provider. Furthermore, COMSAT is not correct that direct access countries have small INTELSAT investment shares.<sup>75</sup> Many of the largest INTELSAT investors – British Telecom (2nd largest), Telenor (4th), Deutsche Telecom (5th), France Telecom (7th), Telstra (9th), Teleglobe (11th) – are in countries with broadly-applicable direct access policies.

Finally, COMSAT focuses on the retail business of other Signatories,<sup>76</sup> but neglects to mention that it is also authorized to provide retail service.<sup>77</sup> COMSAT provides such service to end-users that include the U.S. government.<sup>78</sup> If COMSAT has chosen not to pursue a larger INTELSAT retail business, it is likely because it prefers to earn supranormal profits through its de facto monopoly on access to INTELSAT space segment than to compete for retail customers. It is now time for the Commission to eliminate this monopoly by following the example of the numerous other countries that have adopted direct access.

#### **IV. COMSAT HAS NOT DEMONSTRATED THAT IT SHOULD RECEIVE MORE THAN A NOMINAL SURCHARGE OVER THE IUC**

In the Direct Access NPRM, the Commission requested that COMSAT provide detailed information on its INTELSAT-related costs.<sup>79</sup> COMSAT has failed to do so, offering

---

<sup>75</sup> See id. at 81.

<sup>76</sup> See id. at 81-82.

<sup>77</sup> See Authorized User II, 90 F.C.C.2d at 1397.

<sup>78</sup> See COMSAT RSI, Inc., 10 FCC Rcd. 13712 (1995) (approving tariff for COMSAT services to U.S. government).

<sup>79</sup> See Direct Access NPRM, ¶ 47.

only limited data focusing primarily on INTELSAT's (rather than COMSAT's) rate of return and provides only one-half page of information on COMSAT costs.<sup>80</sup> Indeed, COMSAT's entire submission on its Signatory expenses consists of a single line item: "Estimated Signatory Function Expenses \$3,004,603."<sup>81</sup> In view of COMSAT's almost complete failure to comply with the request for information, the Commission should presume that COMSAT is unable to justify its INTELSAT-related costs.

Furthermore, the limited data supplied by COMSAT do not support more than a nominal IUC surcharge. Most of the information that COMSAT provides relates to INTELSAT's rate of return on assets – which is entirely irrelevant. The relevant rate of return is INTELSAT's pre-tax annual return of 17-21 percent on COMSAT's investment in INTELSAT.<sup>82</sup> COMSAT has not demonstrated that this return is inadequate. Indeed, using COMSAT's stated marginal corporate tax rate of 39 percent<sup>83</sup> (which is a conservative approach because COMSAT's effective tax rate is certainly lower than its marginal rate), INTELSAT pays COMSAT an after-tax return of 10.37-12.81 percent. The 12.48 percent return that COMSAT has been permitted under rate-of-return regulation falls within this range<sup>84</sup>; and using a more realistic effective tax rate, it is likely that the INTELSAT return would exceed COMSAT's permitted rate of return. Moreover, as noted above, MCI WorldCom would be willing to

---

<sup>80</sup> See COMSAT Comments, Att. 1.

<sup>81</sup> Id., Att. 1, Exh. 4.

<sup>82</sup> See Direct Access NPRM, ¶ 9 n.23.

<sup>83</sup> See COMSAT Comments, at Att. 1, Exh. 1.

<sup>84</sup> See id., Att. 1 at 2.

purchase COMSAT's entire INTELSAT investment share because of the attractiveness of the INTELSAT return.

COMSAT also does not justify its claimed 10.44 percent surcharge for its Signatory costs. COMSAT submits a study by its economists that states that "these additional costs include the amortization of capitalized 'top-off' insurance for INTELSAT space segment and the direct administrative costs associated with Comsat's Signatory functions."<sup>85</sup> The study identifies no other Signatory-related costs except "other difficult-to-quantify costs."<sup>86</sup> However, in contradiction to this study, COMSAT calculates an "Investing Signatory Surcharge" that appears to include very substantial additional costs (although insufficient data is provided to analyze these costs).<sup>87</sup> Furthermore, the insurance costs that COMSAT's economists identify should not be included in any surcharge on the IUC, because COMSAT recognizes that INTELSAT now fully insures all satellite costs<sup>88</sup> and because INTELSAT's past decisions to self-insure certain types of expenses were economically rational (and are reflected in the IUC and returns to Signatories).<sup>89</sup>

---

<sup>85</sup> Id., App. 3 at 35.

<sup>86</sup> Id., App. 3 at 36.

<sup>87</sup> See id., Att. 1, Exh. 4. COMSAT's "Estimated Signatory Function Expenses" represent less than 20% of the costs it includes in the "Investing Signatory Surcharge." The remaining costs represent return, depreciation and taxes on unspecified capital assets. Id.

<sup>88</sup> See id., App. 3 at 35 ("until very recently, INTELSAT did not fully insure total satellite deployment costs").

<sup>89</sup> For example, even if uninsured costs associated with the launch failure of INTELSAT 708 reduced INTELSAT's effective 1996 return from 20.2 percent to 18.8 percent, as COMSAT claims, see id., App. 3 at 35 n.59, that 18.8 percent return is above INTELSAT's 1997 return of 18 percent and within INTELSAT's targeted return range of 17-21 percent, see Direct Access NPRM, ¶ 9 n.23.

The only COMSAT expenses that might properly be included in a surcharge on the IUC are expenses associated directly with COMSAT's statutorily-mandated duties as U.S. Signatory to INTELSAT. However, to the extent COMSAT claims expenses associated with its Signatory functions, it must justify those expenses. In particular, recoverable expenses should be limited to those relating to the U.S. government "instructional process" under Section 721 of the Satellite Act, and should not include expenses for COMSAT participation in INTELSAT governance in order to protect its commercial interest in INTELSAT. There is significant evidence that these expenses justify no more than a nominal surcharge on the IUC. **First**, other major countries that have implemented direct access (such as Chile, France, Germany, the Netherlands, and the UK) have entirely eliminated any direct access surcharge.<sup>90</sup> British Telecom states:

The rates BT charges for satellite service using INTELSAT rates reflect commercial considerations. BT does not factor into its pricing decisions "a 'mark-up' over the IUC ... to recover ... costs associated with its Signatory and carrier functions," as Comsat describes its own practice, because BT believes that any such costs are difficult to identify as separate from BT's own commercial undertaking and are, in any case, inconsequential.<sup>91</sup>

**Second**, COMSAT's Signatory functions are akin to the role that any company would play, without charge, with respect to another company in which it owns a substantial interest and has representatives on the board of directors.

---

<sup>90</sup> See, e.g., BT Comments, at 5-6 (elimination of surcharge in UK); GE Americom Comments, at 9 (elimination of surcharge in Germany).

<sup>91</sup> BT Comments, at 5-6.

Significantly, COMSAT's own data show "Estimated Signatory Function Expenses" for 1998 of \$3,004,603, which equal 1.94 percent of COMSAT's "Estimated 1998 IUC Payments to Intelsat" of \$154,770,000.<sup>92</sup> While MCI WorldCom believes that there should be no surcharge on the IUC in connection with direct access, it is clear that the surcharge should not in any event be higher than the 1.94 percent indicated by the unsupported COMSAT data submitted in this proceeding. Furthermore, if the Commission provisionally adopts a surcharge based on that data, it should initiate a separate proceeding in which COMSAT would be required to submit additional data supporting the expenses included in the surcharge.

**V. DIRECT ACCESS DOES NOT THREATEN TO PRODUCE  
COMPETITIVE HARMS OR TO DELAY INTELSAT PRIVATIZATION  
(¶¶ 56-59)**

Three commenters – COMSAT, Lockheed Martin and Columbia – identify claimed harms from direct access.<sup>93</sup> These concerns are not justified.

**First**, direct access would not permit INTELSAT to participate directly in the U.S. market.<sup>94</sup> Consistent with Commission policies adopted in the DISCO II Order<sup>95</sup> and

---

<sup>92</sup> COMSAT Comments, at Att. 1, Exh. 4.

<sup>93</sup> See COMSAT Comments; Lockheed Martin Comments; Columbia Comments. In addition, PanAmSat argues that certain additional regulation of INTELSAT is required in connection with direct access. See PanAmSat Comments, at 7-8.

<sup>94</sup> See COMSAT Comments, at 62-64; Columbia Comments, at 4 ("direct entry into the U.S. international services market by INTELSAT, with its privileges and immunities intact, would have adverse consequences for competition in the marketplace"); see also PanAmSat Comments, at 7-8.

<sup>95</sup> Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, 12 FCC Rcd. 24094 (1997) ("DISCO II Order").



Foreign Participation Order,<sup>96</sup> INTELSAT direct access customers will be U.S. licensees, but INTELSAT itself will not. Such licensees will be fully subject to the Commission's rules, like COMSAT now is as the U.S. provider of INTELSAT services. Therefore, INTELSAT privileges and immunities (including its tax advantages) will affect the U.S. market under direct access no more than they do at present.<sup>97</sup>

**Second**, direct access would not lead to below-cost pricing in the U.S.,<sup>98</sup> just as there is no evidence that it has in the 94 other countries that have adopted direct access. COMSAT's arguments on this point are based on the same misconceptions regarding properly recoverable costs that are addressed above in the context of the IUC surcharge.

**Third**, direct access would not delay INTELSAT privatization.<sup>99</sup> As noted in the initial comments of MCI WorldCom, U.S. carriers have long supported a pro-competitive privatization of INTELSAT and will continue to have strong incentives to do so with implementation of direct access. Presumably, the U.S. government, COMSAT and Lockheed Martin will also remain advocates of privatization.

Furthermore, the fact that INTELSAT privatization may occur within a few years is not a reason to delay direct access.<sup>100</sup> Privatization has been under consideration for many

---

<sup>96</sup> Rules and Procedures on Foreign Participation in the U.S. Telecommunications Market, 12 FCC Rcd. 23891 (1997) ("Foreign Participation Order").

<sup>97</sup> See also MCI WorldCom Comments, at 21-23.

<sup>98</sup> See COMSAT Comments, at 64-69.

<sup>99</sup> See id. at 69-73; Lockheed Martin Comments, at 13-15; Columbia Comments, at 8-9.

<sup>100</sup> See COMSAT Comments, at 76-77; Lockheed Martin Comments, at 7-8.


years and further delays, for reasons entirely unrelated to direct access, are very possible. But the privatization process should not delay direct access, on which the Commission can and should act now, based on clear public interest benefits.

## **VI. CONCLUSION**

For the reasons set forth above and in the initial MCI WorldCom comments, the Commission should implement (1) Level 3 direct access to INTELSAT space segment, (2) a six-month "fresh look" period (commencing upon implementation of direct access) for long-term commitments to COMSAT for access to INTELSAT space segment, and (3) portability of underlying space segment capacity commitments between INTELSAT and COMSAT.

Respectfully submitted,

**MCI WorldCom, Inc.**  
1717 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

  
Robert S. Koppel  
Jennifer A. Manner

*Counsel*

Alfred M. Mamlet  
Maury D. Shenk  
**Steptoe & Johnson LLP**  
1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036

January 29, 1999

## **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Reply Comments was served this 29th day of January 1999, by hand delivery (or first class mail where indicated by an asterisk(\*)) on the following:

Thomas Tycz  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Suite 520  
Washington, D.C. 20554

James Ball  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Suite 820  
Washington, D.C. 20554

Diane Cornell  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Suite 838  
Washington, D.C. 20554

Troy Tanner  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Suite 849  
Washington, D.C. 20554

Joanna Lowry  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Suite 845  
Washington, D.C. 20554

Sande Taxali  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Suite 515  
Washington, D.C. 20554

Alexandra Field  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Suite 579  
Washington, D.C. 20554

Fern Jarmulnek  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Suite 845  
Washington, D.C. 20554

Tania Hanna  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Suite 506  
Washington, D.C. 20554

Kathleen Campbell  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Suite 518  
Washington, D.C. 20554

Vonya McCann  
U.S. Department of State  
Economics & Business Affairs Bureau  
Int'l. Communications & Info Policy  
2201 C Street, NW  
Washington, D.C. 20520

Steve Lett  
U.S. Department of State  
Economics & Business Affairs Bureau  
Int'l. Communications & Info Policy  
2201 C Street, NW  
Washington, D.C. 20520

Jack Gleason  
NTIA  
U.S. Department of Commerce  
Room 4701  
14<sup>th</sup> & Constitution Avenue, NW  
Washington, D.C. 20230

International Transcription Services  
2100 M Street, N.W.  
Suite 140  
Washington, D.C. 20037

Randolph J. May\*  
Sutherland, Asbill & Brennan LLP  
1275 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2404

John Donaldson\*  
Turner Broadcasting System, Inc.  
One CNN Center  
P.O. Box 105366  
Atlanta, GA 30348

Diane Zipursky\*  
National Broadcasting Company, Inc.  
Warner Building, 11<sup>th</sup> Floor  
1299 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Cheryl Lynn Schneider\*  
Eric H. Loeb  
BT North America Inc.  
601 Penn. Ave., NW, Suite 725  
Washington, D.C. 20004

Joel S. Winnik; Peter A. Rohrbach\*  
Mace J. Rosenstein; Karis A. Hastings  
Jeremy B. Miller; Yaron Dori  
Hogan & Hartson L.L.P.  
555 Thirteenth Street, N.W.  
Washington, D.C. 20004-1109

Rachel Joy Rothstein\*  
Paul W. Kenefick  
Cable & Wireless USA  
8219 Leesburg Pike  
Vienna, VA 22182

Warren Y. Zeger; Howard Polsky  
Keith H. Fagan; Bruce Henoch  
COMSAT Corporation  
6560 Rock Spring Drive  
Bethesda, MD 20817

Richard E. Wiley; Lawrence W. Secrest, III  
William B. Baker; Rosemary C. Harold  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, D.C. 20006

Mark W. Johnson\*  
CBS Corporation  
Suite 1200  
600 New Hampshire Avenue, N.W.  
Washington, D.C. 20037

Sam Antar\*  
ABC, Inc.  
77 West 66<sup>th</sup> Street  
New York, NY 10023

Mark C. Rosenblum\*  
Lawrence J. Lafaro  
Teresa Marrero  
AT&T Corp.  
295 N. Maple Avenue, Room 3250H3  
Basking Ridge, NJ 07920

Colin R. Green\*  
British Telecommunications PLC  
British Telecom Centre  
81 Newgate Street  
London EC1A 7AJ ENGLAND

Anne Johnston\*  
M. Veronica Pastor  
Cable & Wireless plc  
124 Theobalds Road  
London WC1X 8RX UNITED KINGDOM

Charles H. Kennedy\*  
Margaret L. Tobey  
Morrison & Foerster LLP  
2000 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006-1888

Raul R. Rodriguez\*  
David S. Keir  
Leventhal, Senter & Lerman, P.L.L.C.  
2000 K Street, N.W., Suite 600  
Washington, D.C. 20006

Philip V. Otero\*  
GE American Communications, Inc.  
Four Research Way  
Princeton, NJ 08540

Eliot J. Greenwald\*  
Tony S. Lee  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007

Stephen M. Piper\*  
Lockheed Martin Global Telecommunications  
6801 Rockledge Drive  
Bethesda, MD 20817

Henry Goldberg\*  
Joseph A. Godles  
Mary J. Dent  
Goldberg, Godles, Wiener & Wright  
1229 Nineteenth Street, N.W.  
Washington, D.C. 20036

Donald E. Martin\*  
Donald E. Martin, P.C.  
6060 Hardwick Place  
Falls Church, VA 22041


Jill Abeshouse Stern\*  
Gerald B. Helman  
Ellipso, Inc.  
1133 21<sup>st</sup> Street, N.W., 8<sup>th</sup> Floor  
Washington, D.C. 20036

James T. Roche\*  
GlobeCast North America Inc.  
1825 K Street, N.W., Suite 1003  
Washington, D.C. 20006

Gerald Musarra\*  
Lockheed Martin Global Telecommunications  
1725 Jefferson Davis Highway  
Crystal Square 2, Suite 400  
Arlington, VA 22202

Stephen R. Bell\*  
Jennifer D. McCarthy  
Willkie Farr & Gallagher  
Three Lafayette Centre, 1155 21<sup>st</sup> Street, N.W.  
Washington, D.C. 20036-3384

Leon Kestenbaum\*  
Kent Nakamura  
James W. Hedlund  
Sprint Communications, L.P.  
1850 M Street, N.W., Suite 1100  
Washington, D.C. 20036

  
Christine A. Delp

DOCUMENT OFF-LINE

This page has been substituted for one of the following:

- o An oversize page or document (such as a map) which was too large to be scanned into the ECFS system.

- o Microfilm, microform, certain photographs or videotape.

- X Other materials which, for one reason or another, could not be scanned into the ECFS system.

The actual document, page(s) or materials may be reviewed by contacting an Information Technician. Please note the applicable docket or rulemaking number, document type and any other relevant information about the document in order to ensure speedy retrieval by the Information Technician.

DISKETTE